

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0056-LII-E TCEQ ID: RN103862447 CASE NO.: 35210
RESPONDENT NAME: ALBERT E. ELLIS

Page 1 of 2

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input checked="" type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATIONS OCCURRED: 4702 Arrowhead Lake Drive, Missouri City, Fort Bend County</p> <p>TYPE OF OPERATION: Landscape and lawn maintenance business</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There is one complaint. The complainant alleged that the Respondent contracted to install an irrigation system without an irrigator license. There is no record of additional pending enforcement actions regarding this respondent.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on June 15, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney: Ms. Peipey Tang, Litigation Division, MC 175, (512) 239-0654 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Mr. Harvey Wilson, Water Enforcement Section, MC 149, (512) 239-0321</p> <p style="margin-left: 20px;">TCEQ Regional Contact: Mr. Stephen Smith, Houston Regional Office, MC R-12, (713) 767-3581</p> <p style="margin-left: 20px;">Respondent: MR. Albert E. Ellis, 3606 Mystic Bay Court, Sugar Land, Texas 77498</p> <p style="margin-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

DOCKET NO.: 2008-0056-LII-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: November 7, 2007</p> <p>Date of Investigation Relating to this Case: December 13, 2007</p> <p>Date of NOE Relating to this Case: December 21, 2007</p> <p>Background Facts: The EDPRP was filed June 27, 2008; service was not achieved. The EDFARP was filed September 9, 2008, was and re-filed on October 15, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondent did receive notice of the EDFARP.</p> <p>The EDSARP was filed February 9, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondent did receive notice of the EDSARP. The Respondent failed to file an answer to either the EDFARP or the EDSARP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent has not obtained an irrigator license.</p> <p>LII: Failed to possess a valid irrigator license issued by the TCEQ prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system [30 TEX. ADMIN. CODE §§ 30.5(a) and 344.4(a)¹; TEX. WATER CODE § 37.003; TEX. OCC. CODE § 1903.251; and Default Findings Order Docket No. 2003-1553-LII-E, Ordering Provision 2.a.].</p>	<p>Total Assessed: \$872</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$872</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p>Site Compliance History Classification N/A</p> <p>Person Compliance History Classification N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall:</p> <ol style="list-style-type: none"> 1. Immediately, cease selling, designing, consulting, installing, maintaining, altering, repairing, or servicing, landscape irrigation systems until properly licensed. 2. Within 15 days, submit a written certification statement demonstrating compliance with Ordering Provision No. 1.

¹ 30 TEX. ADMIN. CODE § 344.4(a) is now found at 30 TEX. ADMIN. CODE § 344.30, adopted to be effective, January 1, 2009, 33 Tex. Reg. 5713.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

DATES	Assigned	7-Jan-2008		
	PCW	3-Sep-2008	Screening	7-Jan-2008
			EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	Albert E. Ellis		
Reg. Ent. Ref. No.	RN103862447		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	35210	No. of Violations	1	
Docket No.	2008-0056-LII-E	Order Type	Findings	
Media Program(s)	Irrigators	Enf. Coordinator	Harvey Wilson	
Multi-Media		EC's Team	Enforcement Team 3	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$250**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **25% Enhancement** **Subtotals 2, 3, & 7** **\$62**

Notes

A 25% enhancement is recommended for having one Default Findings enforcement order.

Culpability **No** **0% Enhancement** **Subtotal 4** **\$0**

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply **0% Reduction** **Subtotal 5** **\$0**

Extraordinary

Before NOV

NOV to EDP RP/Settlement Offer

Ordinary

N/A

X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

Total EB Amounts **\$560** **0% Enhancement*** **Subtotal 6** **\$0**
Approx. Cost of Compliance **\$500** ***Capped at the Total EB \$ Amount**

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$312**

OTHER FACTORS AS JUSTICE MAY REQUIRE **90%** **Adjustment** **\$560**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Recommend an upward adjustment of the penalty due to avoided cost associated with Violation No. 1.

Final Penalty Amount **\$872**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$872**

DEFERRAL **0%** **Reduction** **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$872**

Screening Date 7-Jan-2008

Docket No. 2008-0056-LII-E

PCW

Respondent Albert E. Ellis

Policy Revision 2 (September 2002)

Case ID No. 35210

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN103862447

Media [Statute] Irrigators

Enf. Coordinator Harvey Wilson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

A 25% enhancement is recommended for having one Default Findings enforcement order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

Screening Date 7-Jan-2008	Docket No. 2008-0056-LII-E	PCW
Respondent Albert E. Ellis	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 35210	<small>PCW Revision November 6, 2007</small>	
Reg. Ent. Reference No. RN103862447		
Media [Statute] Irrigators		
Enf. Coordinator Harvey Wilson		
Violation Number 1		
Rule Cite(s)	30 Tex. Admin. Code §§ 344.4(a) and 30.5(a), Tex. Water Code § 37.003, Tex. Occupations Code § 1903.251, and Default Findings Order Docket No. 2003-1553-LII-E, Ordering Provision 2.a.	
Violation Description	Failed to possess a valid irrigator license issued by the TCEQ prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system. Specifically, the Respondent contracted, accepted monies for, and performed irrigation system installation services at 4702 Arrowhead Lake Drive, Missouri City, Fort Bend County, Texas; without possessing a valid, effective landscape irrigator license issued by the Commission, as documented during a record review conducted on December 13, 2007. The Respondent's irrigator license expired in 1993.	
Base Penalty		\$2,500

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				
	Potential				0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			
100% of the rule requirement has not been met.				

Adjustment \$2,250

Violation Events

Number of Violation Events	1	25	Number of violation days
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<small>mark only one with an x</small>	<div style="display: flex; flex-direction: column; align-items: center;"> <div style="text-align: center;">daily</div> <div style="text-align: center;">monthly</div> <div style="text-align: center;">quarterly</div> <div style="text-align: center;">semiannual</div> <div style="text-align: center;">annual</div> <div style="text-align: center;">single event</div> </div>	
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One single event is recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$560	Violation Final Penalty Total \$872
This violation Final Assessed Penalty (adjusted for limits) \$872	

Economic Benefit Worksheet

Respondent: Albert E. Ellis
Case ID No.: 35210
Reg. Ent. Reference No.: RN103862447
Media: Irrigators
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$500	30-Jan-2007	31-Jul-2008	2.4	\$60	\$500	\$560
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to obtain a valid irrigator license, calculated from the date the Respondent wrote the proposal for the sprinkler installation through the expected date of compliance.

Approx. Cost of Compliance

\$500

TOTAL

\$560

Compliance History

Customer/Respondent/Owner-Operator: CN602376808 ELLIS, ALBERT E Classification: Rating:
Regulated Entity: RN103862447 ELLIS, ALBERT E Classification: Site Rating:
ID Number(s):
Location: 3606 Mystic Bay Court, Sugar Land, Texas 77498
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: January 07, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 07, 2002 to January 07, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Harvey Wilson Phone: 512-239-0321

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 03/03/2005

ADMINORDER 2003-1553-LII-E

Classification: Major

Citation: 2D TWC Chapter 34, SubChapter D 34.007(a)
2F TWC Chapter 37, SubChapter L 37.003
30 TAC Chapter 30, SubChapter A 30.5(a)
30 TAC Chapter 344, SubChapter A 344.4

Description: Failure to hold a valid, effective irrigator license prior to selling and installing an sprinkler system.

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 12/12/2003 (257425)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

- F. Environmental audits.

N/A

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

- I. Participation in a voluntary pollution reduction program.

N/A

- J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ALBERT E. ELLIS
RN103862447**

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§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-0056-LII-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Second Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 37, TEX. OCC. CODE ch. 1903, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Albert E. Ellis ("Mr. Ellis").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Ellis owns and operates a landscape and lawn maintenance business, located at 7507 Dawn Mist Court, Sugar Land, Fort Bend County, Texas (the "Operation") at the time of the record review conducted on December 13, 2007.
2. Mr. Ellis sells, designs, consults, installs, maintains, alters, repairs, and/or services landscape irrigation systems. Therefore, Mr. Ellis is subject to TCEQ jurisdiction pursuant to TEX. OCC. CODE ch. 1903, TEX. WATER CODE ch. 37, and 30 TEX. ADMIN. CODE chs. 30 and 344.
3. During a records review conducted on December 13, 2007, TCEQ staff documented that Mr. Ellis failed to possess a valid irrigator license issued by the TCEQ prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system. Specifically, Mr. Ellis contracted, accepted monies for, and performed irrigation system installation services at 4702 Arrowhead Lake Drive, Missouri City, Fort Bend County, Texas without possessing a valid, effective landscape irrigator license.
4. Mr. Ellis received notice of the violations on or about December 26, 2007.

5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Albert E. Ellis" (the "EDPRP") in the TCEQ Chief Clerk's office on June 27, 2008.
6. By letter dated on June 27, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Ellis with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail, "notifying sender of new address." The first class mail has been returned, indicating that Mr. Ellis did not receive notice of the EDPRP.
7. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Albert E. Ellis" (the "EDFARP") in the TCEQ Chief Clerk's office on September 9, 2008.
8. By letter dated on September 9, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Ellis with notice of the EDFARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has been returned, indicating that Mr. Ellis did not receive notice of the EDFARP.
9. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Albert E. Ellis" in the TCEQ Chief Clerk's office on October 15, 2008.
10. By letter dated on October 15, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Ellis with notice of the EDFARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Ellis received notice of the EDFARP.
11. The Executive Director filed the "Executive Director's Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Albert E. Ellis" (the "EDSARP") in the TCEQ Chief Clerk's office on February 9, 2009.
12. By letter dated on February 9, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Ellis with notice

of the EDSARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Ellis received notice of the EDSARP.

13. More than 20 days have elapsed since Mr. Ellis received notice of the EDFARP and the EDSARP, provided by the Executive Director. Mr. Ellis failed to file an answer to either the EDFARP or the EDSARP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Ellis is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 37, TEX. OCC. CODE ch. 1903, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Ellis failed to possess a valid irrigator license issued by the TCEQ prior to selling, designing, consulting, installing, maintaining, altering, repairing or servicing an irrigation system, in violation of 30 TEX. ADMIN. CODE §§ 30.5(a) and 344.4(a)¹; TEX. WATER CODE § 37.003; TEX. OCC. CODE § 1903.251; and Default Findings Order Docket No. 2003-1553-LII-E, Ordering Provision No. 2.a.
3. As Evidenced by Finding of Fact Nos. 9 and 10, the Executive Director has timely served Mr. Ellis with proper notice of the EDFARP filed on October 15, 2008, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact Nos. 11 and 12, the Executive Director has timely served Mr. Ellis with proper notice of the EDSARP filed on February 9, 2009, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 13, Mr. Ellis has failed to file a timely answer to either the EDFARP or the EDSARP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Ellis and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Ellis for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of

¹ 30 TEX. ADMIN. CODE § 344.4(a) is now found at 30 TEX. ADMIN. CODE § 344.30, adopted to be effective, January 1, 2009, 33 Tex. Reg. 5713.

rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

7. An administrative penalty in the amount of eight hundred seventy-two dollars (\$872.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Ellis is assessed an administrative penalty in the amount of hundred seventy-two dollars (\$872.00) for violations of TEX. WATER CODE ch. 37, TEX. OCC. CODE ch. 1903, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Ellis's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Albert E. Ellis; Docket No. 2008-0056-LII-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Mr. Ellis shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Ellis shall cease selling, designing, consulting, installing, maintaining, altering, repairing, or servicing landscape irrigation systems until properly licensed, in accordance with the requirements of 30 TEX. ADMIN. CODE ch. 344; and

- b. Within 15 days after the effective date of this Order, Mr. Ellis shall submit a written certification statement demonstrating compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with copies to:

Manager, Regulatory Compliance Section
Compliance Support Division, MC 178
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and:

Stephen Smith, Water Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Ellis. Mr. Ellis is ordered to give notice of this Order to personnel who maintain day-to-day control over the Operation referenced in this Order.

5. If Mr. Ellis fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Ellis's failure to comply is not a violation of this Order. Mr. Ellis shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Ellis shall notify the Executive Director within seven days after Mr. Ellis becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Ellis shall be made in writing to the Executive Director. Extensions are not effective until Mr. Ellis receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Ellis if the Executive Director determines that Mr. Ellis has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF PEIPEY TANG

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Peipey Tang. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, Mary Hammer filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Albert E. Ellis" (the "EDPRP") with the Office of the Chief Clerk on June 27, 2008.

Mary Hammer sent the EDPRP to Mr. Ellis at his last known address on June 27, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail, "notifying sender of new address." The first class mail has been returned, indicating the respondent did not receive notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(a).

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Albert E. Ellis" (the "EDFARP") with the Office of the Chief Clerk on September 9, 2008.

I sent the EDFARP to Mr. Ellis at his last known address on September 9, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has been returned, indicating the respondent did not receive notice of the EDFARP, in accordance with 30 TEX. ADMIN. CODE § 70.104(a).

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Albert E. Ellis" with the Office of the Chief Clerk on October 15, 2008.

I sent the EDFARP to Mr. Ellis at his last known address on October 15, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class

mail has not been returned, indicating the respondent received notice of the EDFARP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Albert E. Ellis" (the "EDSARP") with the Office of the Chief Clerk on February 9, 2009.

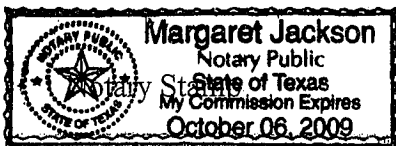
I sent the EDSARP to Mr. Ellis at his last known address on February 9, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating the respondent received notice of the EDSARP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Mr. Ellis received notice of the EDFARP and the EDSARP. Mr. Ellis failed to file an answer to either the EDFARP or the EDSARP, failed to request a hearing, and failed to schedule a settlement conference."

Peipey Tang
Peipey Tang
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Peipey Tang, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 21 day of May, A.D., 2009.



Margaret Jackson
Notary Signature